

## SENATE BILL No. 489

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-4.

**Synopsis:** Public zoning hearings. Requires a plan commission to hold two public hearings before making a recommendation on adopting, amending, or partially repealing a zoning ordinance or changing a zone map. Requires a board of zoning appeals to hold two public hearings before approving or denying a variance, an exception, or a use.

**Effective:** July 1, 2005.

**Kruse**

January 18, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 489

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-7-4-602 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 602. (a) The following  
3 procedure applies to a proposal to adopt an initial zoning ordinance (or  
4 to adopt a replacement zoning ordinance after repealing the entire  
5 zoning ordinance, including amendments and zone maps) for a  
6 jurisdiction:

- 7 (1) The plan commission must initiate the proposal.
- 8 (2) The plan commission must prepare the proposal so that it is  
9 consistent with section 601 of this chapter.
- 10 (3) The plan commission and the legislative body both must  
11 comply with section 603 of this chapter.
- 12 (4) The plan commission must give notice and hold ~~a~~ **two (2)**  
13 public ~~hearing~~ **hearings** under section 604 of this chapter.
- 14 (5) The plan commission must certify the proposal to the  
15 legislative body under section 605 of this chapter.
- 16 (6) The legislative body must consider the proposal under section  
17 606 of this chapter, and section 606 governs whether the proposal



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is adopted or defeated.

(7) If the proposal is adopted under section 606 of this chapter, the plan commission must print (and publish, if required) the ordinance under section 610 of this chapter.

(8) The ordinance takes effect as described in section 610 of this chapter.

(b) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to amend or partially repeal the text (not zone maps) of the ordinance:

(1) The plan commission may initiate the proposal. (Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)

(2) The plan commission must prepare the proposal so that it is consistent with section 601 of this chapter.

(3) The plan commission and the legislative body both must comply with section 603 of this chapter.

(4) The plan commission must give notice and hold ~~a~~ **two (2)** public ~~hearing~~ **hearings** under section 604 of this chapter.

(5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.

(6) The legislative body must consider the proposal under section 607 of this chapter, and section 607 governs whether the proposal is adopted or defeated.

(7) If the proposal is adopted under section 607 of this chapter, the plan commission must print the amendments to the zoning ordinance under section 610 of this chapter.

(8) The amendments take effect as described in section 610 of this chapter.

(c) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to change the zone maps (whether by incorporating an additional map or by amending or deleting a map) incorporated by reference into the ordinance:

(1) The proposal may be initiated either:

(A) by the plan commission; or

(B) by a petition signed by property owners who own at least fifty percent (50%) of the land involved.

(Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)

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(2) The plan commission or petitioners must prepare the proposal so that it is consistent with section 601 of this chapter.

(3) The plan commission and the legislative body both must comply with section 603 of this chapter.

(4) The plan commission must give notice and hold ~~a two~~ **(2)** public ~~hearing~~ **hearings** under section 604 of this chapter.

(5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.

(6) The legislative body must consider the proposal under section 608 of this chapter, and section 608 governs whether the proposal is adopted or defeated.

(7) If the proposal is adopted under section 608 of this chapter, the plan commission must update the zone maps that it keeps available under section 610 of this chapter.

(8) The zone map changes take effect as described in section 610 of this chapter.

SECTION 2. IC 36-7-4-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 604. (a) Before the plan commission certifies a proposal to the legislative body under section 605 of this chapter, the plan commission must hold ~~a two~~ **(2)** public ~~hearing~~ **hearings** under this section. **At the first public hearing, the plan commission shall take public testimony and answer questions from the public concerning the proposal. Not less than thirty (30) days after the first public hearing, the plan commission shall hold a second public hearing on the proposal. At the second public hearing, the plan commission shall again take public testimony and answer questions from the public concerning the proposal. After the receipt of public testimony and the holding of a question and answer period at the second public hearing, the plan commission shall, at the conclusion of the second public hearing or on a subsequent date:**

**(1) determine the plan commission's recommendation on the proposal, if any; and**

**(2) certify the proposal to the legislative body, if required under this chapter.**

(b) The plan commission shall give notice of ~~the each~~ hearing by publication under IC 5-3-1. ~~The Each~~ notice must state:

(1) the time and place of the hearing;

(2) either:

(A) in the case of a proposal under section 606 or 607 of this chapter, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies; or

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(B) in the case of a proposal under section 608 of this chapter, the geographic area that is the subject of the zone map change; (Subdivision (2) does not require the identification of any real property by metes and bounds.)

(3) either:

(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text of the ordinance);

(B) in the case of a proposal under section 607 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text) that describes any new or changed provisions; or

(C) in the case of a proposal under section 608 of this chapter, a description of the proposed change in the zone maps;

(4) if the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(5) the place where a copy of the proposal is on file for examination before the hearing;

(6) that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered;

(7) that oral comments concerning the proposal will be heard; and

(8) that the hearing may be continued from time to time as may be found necessary.

(c) The plan commission shall also provide for due notice to interested parties at least ten (10) days before the date set for the hearing. The commission shall by rule determine who are interested parties, how notice is to be given to interested parties, and who is required to give that notice. However, if the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under this subsection.

(d) ~~The A~~ hearing **under this section** must be held by the plan commission at the place stated in the notice. The commission may ~~also~~ give notice and hold **one (1) or both** hearings at ~~other~~ places within the county where the distribution of population or diversity of interests of the people indicate that the hearings would be desirable. The commission shall adopt rules governing the conduct of hearings under

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1 this section.

2 (e) A zoning ordinance may not be held invalid on the ground that  
3 the plan commission failed to comply with the requirements of this  
4 section, if the notice and hearing substantially complied with this  
5 section.

6 (f) The files of the plan commission concerning proposals are public  
7 records and shall be kept available at the commission's office for  
8 inspection by any interested person.

9 (g) METRO. In the case of a proposal to amend a zoning map under  
10 section 608 of this chapter or in the case of a proposed approval of a  
11 development plan required by a zoning ordinance as a condition of  
12 development, a person may not communicate before ~~the a~~ hearing with  
13 any hearing officer, member of the historic preservation commission,  
14 or member of the plan commission with intent to influence the officer's  
15 or member's action on the proposal. Before ~~the a~~ hearing, the staff may  
16 submit a statement of fact concerning the physical characteristics of the  
17 area involved in the proposal, along with a recital of surrounding land  
18 use and public facilities available to serve the area. The staff may  
19 include with the statement an opinion of the proposal. The statement  
20 must be made a part of the file concerning the proposal not less than six  
21 (6) days before the proposal is scheduled to be heard. The staff shall  
22 furnish copies of the statement to persons in accordance with rules  
23 adopted by the commission.

24 (h) METRO. In the case of a proposal to amend a zoning map under  
25 section 608 of this chapter, this subsection applies if the proposal  
26 affects only real property within the corporate boundaries of an  
27 excluded city. Notwithstanding the other provisions of this section, the  
28 legislative body of the excluded city may decide that the legislative  
29 body rather than the plan commission should hold the public ~~hearing~~  
30 **hearings** prescribed by this section. Whenever the plan commission  
31 receives a proposal subject to this section, the plan commission shall  
32 refer the proposal to the legislative body of the excluded city. At the  
33 legislative body's first regular meeting after receiving a referred  
34 proposal, the legislative body shall decide whether the legislative body  
35 will hold the public ~~hearing~~. ~~Within thirty (30) days after making the~~  
36 ~~decision to hold the hearing,~~ **hearings**. The legislative body shall hold:

37 **(1) the first public hearing not more than thirty (30) days after**  
38 **making the decision to hold the hearings,** acting for purposes of  
39 this section as if the legislative body is the plan commission; **and**  
40 **(2) the second public hearing not less than thirty (30) days**  
41 **after the first public hearing;**  
42 **in accordance with this section. After the second public hearing, the**

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legislative body shall ~~then~~ make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for **holding the second** public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. If the proposal receives a favorable recommendation from the commission, the proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

(i) Before a proposal involving a structure regulated under IC 8-21-10 may become effective, the plan commission must have received:

(1) a copy of:

(A) the permit for the structure issued by the Indiana department of transportation; or

(B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and

(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

SECTION 3. IC 36-7-4-607 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 607. (a) This section applies to a proposal, as described in section 602(b) of this chapter, to amend or partially repeal the text (not zone maps) of the zoning ordinance.

(b) ADVISORY—AREA. If the proposal is initiated by a participating legislative body instead of the plan commission, the proposal must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body.

(c) ~~On receiving or initiating the proposal;~~ The commission shall ~~within sixty (60) days;~~ hold: a

**(1) the first public hearing not more than sixty (60) days after receiving or initiating the proposal; and**

**(2) the second public hearing not less than thirty (30) days after the first public hearing;**

in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(d) The legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

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(e) This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt, reject, or amend the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body fails to act on the proposal within ninety (90) days after certification, it takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(4) If the legislative body rejects or amends the proposal, it shall be returned to the plan commission for its consideration, with a written statement of the reasons for the rejection or amendment. The commission has forty-five (45) days in which to consider the rejection or amendment and report to the legislative body as follows:

(A) If the commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the legislative body as of the date of the filing of the commission's report of approval with the legislative body or the end of the forty-five (45) day period.

(B) If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another vote of the legislative body within forty-five (45) days after the commission certifies its disapproval. If the legislative body fails to confirm its action under this clause, the ordinance takes effect in the manner provided in subdivision (3).

(f) ADVISORY—AREA. This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt, reject, or amend the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

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(3) If the legislative body rejects the proposal or fails to act on it within ninety (90) days after certification, it is defeated.

(4) If the legislative body amends the proposal, it shall be returned to the plan commission for its consideration, with a written statement of the reasons for the amendment. The commission has forty-five (45) days in which to consider the amendment and report to the legislative body as follows:

(A) If the commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the legislative body as of the date of the filing of the commission's report of approval with the legislative body or the end of the forty-five (45) day period.

(B) If the commission disapproves the amendment, the action of the legislative body on the original amendment stands only if confirmed by another vote of the legislative body within forty-five (45) days after the commission certifies its disapproval. If the legislative body fails to confirm its action under this clause, the ordinance is defeated as provided in subdivision (3).

SECTION 4. IC 36-7-4-608 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 608. (a) This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) If the proposal is not initiated by the plan commission, it must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body. ~~On receiving or initiating the proposal,~~ The commission shall ~~within sixty (60) days,~~ hold: a

**(1) the first public hearing not more than sixty (60) days after receiving or initiating the proposal; and**

**(2) the second public hearing not less than thirty (30) days after the first public hearing;**

in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(c) METRO. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter, the legislative body may, by a majority of those voting, schedule the proposal for a hearing on a date not later than its next regular

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meeting.

(2) If the legislative body fails to schedule the proposal for a hearing under subdivision (1), the ordinance takes effect as if it had been adopted at the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter.

(3) For purposes of this subdivision, the final action date for a proposal is the date thirty (30) days after the date that the proposal is certified under section 605 of this chapter, or the date of the second regular meeting after the proposal is certified under section 605 of this chapter, whichever is later. If the legislative body schedules the proposal for a hearing under subdivision (1) but fails to act on it by the final action date, the ordinance takes effect as if it had been adopted (as certified) on the final action date. However, the period of time from certification under section 605 of this chapter to the final action date may be extended by the legislative body, with the consent of the initiating plan commission or the petitioning property owners. If the legislative body fails to act on the proposal by the final action date (as extended), the ordinance takes effect as if it had been adopted (as certified) on that extended final action date.

(4) If the legislative body schedules the proposal for a hearing under subdivision (1), it shall announce the hearing during a meeting and enter the announcement in its memoranda and minutes. The announcement must state:

- (A) the date, time, and place of the hearing;
- (B) a description of the proposed changes in the zone maps;
- (C) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor will be heard; and
- (D) that the hearing may be continued from time to time as may be found necessary.

(5) If the legislative body rejects the proposal at a hearing scheduled under subdivision (1), it is defeated.

(d) METRO. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (c)(5).

(e) ADVISORY—AREA. The legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

(f) ADVISORY—AREA. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

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(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(g) ADVISORY—AREA. This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, it is defeated.

(h) ADVISORY—AREA. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

SECTION 5. IC 36-7-4-911 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 911. **(a)** An action of the board of zoning appeals is not official unless it is authorized by a majority of the entire membership of the board.

**(b) An action of the board of zoning appeals concerning the approval or denial of a:**

**(1) variance;**

**(2) special exception;**

**(3) special use;**

**(4) contingent use; or**

**(5) conditional use;**

**is not official unless the board considers the action at two (2) public hearings, occurring not less than thirty (30) days apart, before**

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1 **making a final determination on the action.**

2 SECTION 6. IC 36-7-4-919 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 919. (a) An appeal filed  
4 with the board of zoning appeals must specify the grounds of the appeal  
5 and must be filed within such time and in such form as may be  
6 prescribed by the board of zoning appeals by rule.

7 (b) The administrative official, hearing officer, administrative board,  
8 or other body from whom the appeal is taken shall, on the request of the  
9 board of zoning appeals, transmit to it all documents, plans, and papers  
10 constituting the record of the action from which an appeal was taken.

11 (c) Certified copies of the documents, plans, and papers constituting  
12 the record may be transmitted for purposes of subsection (b).

13 (d) Upon appeal, the board may reverse, affirm, or modify the order,  
14 requirement, decision, or determination appealed from. For this  
15 purpose, the board has all the powers of the official, officer, board, or  
16 body from which the appeal is taken.

17 (e) The board shall make a decision on any matter that it is required  
18 to hear under the 900 series ~~either:~~

19 ~~(1) at the meeting~~ **second public hearing** at which that matter is  
20 ~~first presented. or~~

21 ~~(2) at the conclusion of the hearing on that matter, if it is~~  
22 ~~continued.~~

23 (f) Within five (5) days after making any decision under the 900  
24 series, the board of zoning appeals shall file in the office of the board  
25 a copy of its decision.

26 SECTION 7. IC 36-7-4-920 IS AMENDED TO READ AS  
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 920. (a) The board of  
28 zoning appeals shall fix a reasonable time for ~~the hearing of hearings~~  
29 **on** administrative appeals, exceptions, uses, and variances.

30 (b) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and  
31 due notice to interested parties shall be given at least ten (10) days  
32 before the date set for ~~the a~~ hearing.

33 (c) The party taking the appeal, or applying for the exception, use,  
34 or variance, may be required to assume the cost of public notice and  
35 due notice to interested parties. At ~~the a~~ hearing, each party may appear  
36 in person, by agent, or by attorney.

37 (d) The board shall, by rule, determine who are interested parties,  
38 how notice is to be given to them, and who is required to give that  
39 notice.

40 (e) The staff (as defined in the zoning ordinance), if any, may appear  
41 before the board at ~~the a~~ hearing and present evidence in support of or  
42 in opposition to the granting of a variance or the determination of any

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1 other matter.

2 (f) Other persons may appear and present relevant evidence.

3 (g) A person may not communicate with any member of the board  
4 before the hearing with intent to influence the member's action on a  
5 matter pending before the board. Not less than five (5) days before ~~the~~  
6 a hearing, however, the staff (as defined in the zoning ordinance), if  
7 any, may file with the board a written statement setting forth any facts  
8 or opinions relating to the matter.

9 (h) The board may require any party adverse to any pending petition  
10 to enter a written appearance specifying the party's name and address.  
11 If the written appearance is entered more than four (4) days before ~~the~~  
12 a hearing, the board may also require the petitioner to furnish each  
13 adverse party with a copy of the petition and a plot plan of the property  
14 involved.

15 SECTION 8. [EFFECTIVE JULY 1, 2005] (a) **IC 36-7-4-602,**  
16 **IC 36-7-4-604, IC 36-7-4-607, and IC 36-7-4-608, all as amended by**  
17 **this act, apply to a proposal initiated after June 30, 2005.**

18 (b) **IC 36-7-4-911, IC 36-7-4-919, and IC 36-7-4-920, all as**  
19 **amended by this act, apply to:**

20 (1) **an administrative appeal; or**

21 (2) **a petition or an application for a variance, a special**  
22 **exception, a special use, a contingent use, or a conditional use;**  
23 **filed with a board of zoning appeals after June 30, 2005.**

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